

TREATY RIGHTS AT RISK: BACKGROUND AND THE FEDERAL RESPONSE

Puget Sound Team Meeting ~ Sept 21, 2017

Background - 1974 Boldt Decision

- Treaty-reserved rights of Western Washington Tribes to half of the salmon harvest
- Co-managers of salmon with the State of Washington.

Species of Concern

- Puget Sound Chinook Salmon
 - ▣ Down to 22 of at least 37 populations
 - ▣ 1-10% of their historic numbers
- Hood Canal Summer Chum
- Bull Trout
- Olympia Oysters and Northern Abalone

Salmon Recovery Plan

- 2007 National Marine Fisheries Service Puget Sound Chinook Salmon Recovery Plan
 - ▣ 14 locally-developed, watershed-specific strategies
 - ▣ '4 Hs' impacting salmon:
 - Habitat Harvest
 - Hatcheries Hydropower
- 2011 NOAA Qualitative Assessment of Implementation of the Puget Sound Chinook Salmon Recovery Plan:
 - ▣ habitat required for salmon recovery continues to decline

NWIFC Treaty Rights at Risk White Paper

July, 2011

In this paper, the tribes requested the following:

- Council on Environmental Quality (CEQ) intervention
- Congressional hearings
- Federal agency litigation to ensure adequate in-stream flows
- Take control of implementation of salmon recovery plans from the State
- Coordinate and align policies, programs and actions with salmon recovery goals, and
- Stop allowing statutory obligations to supersede treaty obligations.

Treaty Rights at Risk - Response

- CEQ held meeting with federal agency leaders
- EPA, NOAA and NRCS regional administrators designated as co-chairs for the effort
- 14 Federal Agencies involved

Treaty Rights at Risk

March 2, 2012 Follow-Up Letters

- Shorelines
 - Use CWA §404 authority to prohibit discharge in tribal priority areas, and to prevent issuance of nationwide and general permits for shoreline modifications.
- Water Quality
 - Incorporate tribal input into TMDL development and implementation
 - Develop and implement TMDLs consistent with habitat recovery
 - Update NPDES permits & request §7 consultation
 - Update water quality standards, including the fish consumption rate
 - Condition the Washington Coastal Nonpoint Plan to require habitat improvements
- Riparian Management
 - Increase enforcement
 - Specify Best Management Practices (BMP) consistent with salmon recovery
 - Condition funding to require use of BMPs
- Floodplain Management
- Fish Passage
- Stream Flow

Federal Habitat Response: Action Plan

- Puget Sound federal agencies agree to:
 - ▣ Coordinate programs with one another and with State and Tribes to protect and restore habitat
 - ▣ Coordinate funding to the extent allowed by law
 - ▣ Prioritize protection and restoration of shoreline and nearshore habitats, floodplains, and water quality
 - ▣ Report progress to CEQ regularly
- Plan focuses on:
 - ▣ Policy coordination
 - ▣ Enhancing use of existing authorities
 - ▣ Stepping up compliance and enforcement efforts
 - ▣ Directing funding toward habitat restoration
 - ▣ Aligning science, monitoring and research
 - ▣ Improving communications and public involvement

Federal Agency Response:

Habitat Matrix

- Authorities regarding habitat protection and restoration
- Past and current activities involving habitat protection and restoration
- Additional new habitat commitments, including roles, timeframes, geographic scope, and output and outcome measures to provide for accountability

Habitat Matrix – EPA Commitments

- 41 specific actions, focusing on TMDLs, stormwater, wetland protection, and nonpoint source compliance and enforcement
- Examples:
 - ▣ Development of a stormwater permit for JBLM to serve as a model for other federal facilities
 - ▣ NEP Funding targeted to habitat improvement
 - ▣ Support development of TMDLs that address habitat and tribal resources
 - ▣ Increased wetlands enforcement

Federal Habitat Response:

Federal/Tribal Forum

- Address unresolved issues impeding the implementation of watershed specific salmon recovery plans
- Issues brought forward by individual tribes
- Involvement of other entities critical to resolving issues
- Tribes continue to seek CEQ appointment of a federal coordinator with authority to work across agency lines to ensure treaty rights are protected

Tribal Reaction

- Tribes are encouraged by the early response from the federal government; effort is a good start
- Tribes wanted to see more substance, particularly in regards to their March 2, 2012 correspondence
- Federal habitat matrix a collection of good things federal agencies are willing to do but not a comprehensive plan to recover salmon

2013/2014 Swinomish Forum on NEP Funding for Riparian Buffers

- Tribes have asked that NEP funding be better aligned with salmon recovery and that funded actions are consistent with recovery plans.
- FY12 funding focused on habitat, salmon, and shellfish
- EPA Project Officers met with NWIFC staff and Tribes to present potential opportunities for Tribal input:
 - ▣ Terms and Conditions, expressed in the RFP
 - ▣ Comment on FY12 Lead Organization (LO) workplans (provided)
 - ▣ Participation on LO RFP selection panels if Tribe is not an applicant
 - ▣ Comment on subawards selected by LO, prior to workplan negotiation (on-going)

Treaty Rights at Risk: Six Issues



- In December 2015 Federal Leaders met with W.Washington Treaty Tribes to discuss six issues.
- Coordinated by CEQ

NEP Funding – BMPs and Ag issues

- NWIFC proposed terms and conditions:
 - ▣ Set minimum requirements that NEP-funded programs and activities affecting riparian land management achieve minimum buffer widths specified by tribes and federal fish agencies
 - ▣ Require that federally funded conservation easements and fee simple acquisitions include language that implements at a minimum the riparian recommendations
 - ▣ Require that the location and specification of all BMPs for protecting habitat and water quality be documented and made publically available. Implementation of BMPs needs to be monitored

Single parameter focused BMPs are not consistent with watershed and salmon recovery

Over-reliance on delegation of responsibility to local governments (e.g. Shoreline Management Program)

Watershed characterization should not supplant pre-existing recovery plans

The Six Issues Are:

1. NOAA and EPA should provide oversight under the Coastal Zone Act Reauthorization Amendments (CZARA) to require Washington State to adopt nonpoint source BMPs that protect water quality - **EPA/NOAA** lead
2. Shoreline Armoring: Protection of ESA habitat landward of the Corps' Clean Water Act jurisdictional boundary – **USACE/EPA/NOAA**
3. Marine/Freshwater Shorelines: Cumulative effects of the Nationwide Permit Program – **USACE/EPA**
4. Provide greater information and transparency on USDA funded agricultural best management practice projects – **USDA**
5. Riparian Buffers: Respond to tribes' request to revise USDA practices – **USDA/NOAA/EPA/CEQ**
6. Develop and approve watershed-specific hatchery plans consistent with the ESA and NEPA – **USFWS/EPA/NOAA/BIA**